Roy H. Park Broadcasting of Roanoke, Inc. *and* **Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees.** Case 5-CA-11520

March 24, 1981

DECISION AND ORDER

On November 6, 1980, Administrative Law Judge Charles M. Williamson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed a memorandum in response to Respondent's exceptions, and the Charging Party filed a brief in opposition to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent, Roy H. Park Broadcasting of Roanoke, Inc., Roanoke, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Discharging or otherwise discriminating against employees for refusing to take part without union representation in an interview or meeting where the employee has reasonable grounds to believe that the matters to be discussed may result in the employee's being the subject of disciplinary action, or because they gave testimony under the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT require any employee to take part in an investigatory interview where the employee has reasonable grounds to believe that the matter to be discussed may result in his or her being the subject of disciplinary action and where we have ignored, denied, or refused any request by him or her to have union representation.

WE WILL NOT discharge or suspend any employee on the basis of his refusal to participate in an investigatory-disciplinary interview where we have ignored or denied the employee's request to have union representation at said interview or because he gave testimony under the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind our directives of June 22, 1979, and October 10, 1979, which deny employees bulletin board privileges previously enjoyed by them.

WE WILL offer Barry McDaniel immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent one, without prejudice to his seniority and other rights and privileges enjoyed by him, and WE WILL make him whole

[1] Respondent has excepted to certain credibility findigns made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge found, and we agree, that Respondent violated Sec. 8(a)(4) and (1) of the Act by discharging employee Barry McDaniel. In doing so, he inadvertently failed to make a finding on the complaint allegation that the discharge also violated Sec. 8(a)(3). However, in the absence of exceptions we find it unnecessary to make such a finding inasmuch as the remedy therefor would be identical to that already provided.

In his discussion of an employees' *Weingarten* rights, the Administrative Law Judge cites *General Electric Company*, 240 NLRB No. 66, fn. 12. While that case stands for the proposition for which it is cited, the citation thereto should read 240 NLRB 479, 481 (1979).

In adopting the Administrative Law Judge's findings, we find it unnecessary to rely on *Atlantic Steel Company*, 245 NLRB 814 (1979), as we find that case inapposite to the facts herein.

[2] Respondent has excepted to par. 1(a) of the Administrative Law Judge's recommended Order, contending that the language there in is overly broad. The General Counsel concurs in Respondent's contention. We find merit in this exception, and accordingly modify the recommended Order to limit the cease-and-desist order to discipline imposed against employees for refusing to take part without union representation in an interview "where the employees has reasonable grounds to believe that the matters to be discussed may result in the employee's being the subject of disciplinary action."

In discussing the appropriate remedy for McDaniel's discriminatory discharge, the Administrative Law Judge failed to refer to the Board's discussion of payment of interest contained in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). We hereby correct his inadvertent error.

for any loss of pay he may have suffered by reason of his termination, plus interest.

ROY H. PARK BROADCASTING OF ROANOKE, INC.

DECISION

STATEMENT OF THE CASE

CHARLES M. WILLIAMSON, Administrative Law Judge: This case was based on a complaint and notice of hearing issued on November 2, 1979, by the Regional Director or Region 5 of the National Labor Relations Board. The complaint was based on a charge filed on September 24, 1979, by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, herein called the Charging Party, alleging violation of Section 8(a)(1), (3), and (4). The hearing took place at Roanoke, Virginia, on April 7, 1980. The complaint alleges that Roy H. Park Broadcasting of Roanoke, Inc., herein called Respondent, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended, by denying employees their customary use of Respondent's bulletin boards, threatening employees with suspension should they continue the use of the bulletin boards, refusing employee Barry McDaniel the presence of a union representative during an interview where he could reasonably anticipate resulting disciplinary action, and discharging McDaniel on September 19, 1979.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Virginia corporation, is engaged at its Roanoke, Virginia, location in providing commercial television broadcasting under call letters WSLS-TV. During the 12 months prior to the issuance of the complaint, a representative period, Respondent received gross revenues in excess of $100,000. During the same period of time, Respondent received revenues in excess of $50,000 from national advertisers located outside the State of Virginia. Respondent admits, and I find that Respondent is, and has been at all times material herein, an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find, that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. The denial of bulletin board use

Respondent maintains three bulletin boards at its broadcasting facility. These are located in the lobby, the control room, and the basement. Prior to June 22, 1979, employees posted various types of material on these bulletin boards.[1] Shop Steward William R. Bass testified that at various times between December 1978 and June 22, 1979, he posted union material on the bulletin boards. No evidence was presented to show the existence of any explicit rules governing the use of the bulletin boards prior to June 22, 1979. While Respondent's witness, Teter, testified that it had been Respondent's policy for "years" that nothing was to be posted without permission, he was unable to recall "one instance" where such permission had been secured. Teter admitted that there had not been any specific memorandum or directive to employees prior to June 22, 1979, concerning the use of the bulletin boards. Under these circumstances, I find that Respondent's practice was one of *laissez faire* toward the use by employees of the bulletin board prior to June 22, 1979. On June 22, 1979, Respondent issued a notice prohibiting employee use of bulletin boards (G.C. Exh. 13). On October 10, 1979, Respondent placed on the bulletin boards a second notice (G.C. Exh. 14) identical to the first with the added sentence "This rule must not be violated or suspension may result." Collective bargaining between Respondent and the Charging Party had been underway about 4 months at the time the June 22 notice was posted.[2]

2. The September 18, 1979, interview and the September 19, 1979, discharge of employee Barry McDaniel

Barry McDaniel was hired in May 1978 as a building custodian. In the late fall of that year, he became involved in the Charging Party's organizational campaign. McDaniel signed an authorization card at that time as well as soliciting the signatures of others of Respondent's employees.[3]

Respondent's first official criticism of McDaniel's job performance occurred in early May 1979 when Supervisor Linkous called him into Linkous' office. Linkous told him that the building was dirty and that other employees were complaining of this condition. McDaniel remonstrated that employees had told him the building was as clean as it had been in years. Linkous replied that he would like to have those employees tell him that. Subsequently, McDaniel caused to be circulated a petition (G.C. Exh. 12), on which he obtained 17 employees signatures attesting to the statement that "Barry McDaniel is performing his job properly and has met his duties

[1] On one occasion prior to June 22, a picture of an aardvark was posted and remained on the bulletin board for a substantial period.

[2] The parties had bargained about bulletin board use, but no agreement had resulted. Some material posted by employees had concerned the general progress of negotiations. The General Counsel's witness, Bass, testified that prior to June 22 union material posted by him was removed by management more quickly than other material. I do not place any weight on this testimony because of its vagueness and an inability to distinguish such removal from the occasional "policing" of the bulletin board, which all parties agree occurred prior to June 22, 1979.

[3] Although McDaniel was hired as a building custodian he was, around this time, allowed to perform camera work on an intermittent basis. McDaniel testified (and I credit him) that in December 1978 Operations Manager Linkous and Vice President Teter both warned him that he would not be allowed the desirable camera work if the Union's organizing campaign was successful. Neither Linkous nor Teter denied these incidents although both testified. Similar threats were a subject of a settlement agreement in Cases 5-CA-10484 and 5-CA-10565.

fully. This petition was given to Linkous. The latter presented it to Respondent's vice president, Teter. At a meeting on May 30, 1979, concerning the petition, Teter criticized McDaniel's job performance. The meeting ended when McDaniel walked out of the office after announcing that he did not have to "sit here and take this stuff." The following day McDaniel received a memorandum from Respondent announcing that insubordination would not be tolerated.

During the late spring and summer of 1979, McDaniel was involved as an affiant and discriminatee in Cases 5-CA-10484, 5-CA-10565, and 5-CA-11037. McDaniel's name appeared on an attachment to the charge in Case 5-CA-10565, filed on February 28, 1979 (G.C. Exh. 3). This charge was, pursuant to normal procedures, served on Respondent. McDaniel's name also appeared in a make-whole provision of the notice attached to the settlement agreement in Cases 5-CA-10484 and 5-CA-10565. See G.C. Exh. 5. This notice had, of course, to be signed and posted by responsible officials of Respondent.[4]

On September 1979, McDaniel's regular supervisor, Operations Manager Mel Linkous, told McDaniel that he was going on vacation. Linkous instructed McDaniel that while he (Linkous) was absent, McDaniel would receive his orders from Lee Garrett.[5] On September 17, Garrett transmitted a written list of job assignments to McDaniel.[6] Only one of the job assignments was completed on September 17. On September 18, McDaniel was given a second list of job assignments (G.C. Exh. 16) which, *inter alia*, contained the two uncompleted tasks of the previous day. The list also contained the instruction: "Also, be sure that you sign out at front desk *any time* you leave the premise [sic]."[7] On September 18, McDaniel left the premises of Respondent to obtain necessary supplies for his work. Prior to leaving, he obtained Garrett's signature on a purchase order for the material. Garrett told him at this time to follow the signout procedure. When McDaniel left, he placed his name on the signout sheet (G.C. Exh. 17) under the word "out," but did not write down the time he left. The sheet shows that other employees normally wrote the time out next to their name.[8] After purchasing the supplies, McDaniel returned them to the plant and left the premises again, this time to eat lunch. He did not sign in or out prior to leaving for lunch. He returned at 1:45 p.m. to be greeted by Garrett in the station lobby. Garrett took him to the signout book and had him make the appropriate entries for the time he left and returned.[9] McDaniel turned in the keys of the company car (he had inadvertently taken these keys with him when he went to lunch) at the request of secretary Shirley Carter. Garrett requested that McDaniel then come to his office.

At the interview in the office, only Garrett and McDaniel were present. Garrett began by questioning McDaniel as to where he had been. McDaniel replied that he had been to lunch and the hardware store. Garrett then asked if McDaniel had finished all his work assignments. McDaniel said he had not and then requested that a union representative be present at the interview. Garrett replied that "it was not a matter for Union representation, but it was a matter of work assignments" and continued questioning McDaniel about items such as whether he used the company car to go to lunch, why he had not signed out prior to lunch, and why he had not turned in the car keys. When McDaniel said he had forgotten about the keys and that he had been in a hurry and forgotten to sign out prior to lunch, Garrett said "You forget a lot, don't you?" McDaniel then renewed his request for union representation and Garrett again replied that "it wasn't a matter of Union representation, but a matter for work assignments." At this point McDaniel testified that he became upset, got out of his chair, and began to leave Garrett's office. As he did so, he told Garrett that he "did not have to sit there and take this." As McDaniel was leaving, Garrett told him that this could cost him his job. At that point, McDaniel was already in the hall outside the office. In a loud voice, McDaniel stated that he did not have to take this "crap" and that Garrett should "shut up."[10] While Garrett's account of this conversation differs in some particulars, there is no essential difference between his and McDaniel's testimony.

After leaving Garrett's office, McDaniel went to Union Representative Bass and complained about the "harassment" to which he had been subjected. Bass attempted to locate Garrett that afternoon to discuss the incident but was unsuccessful.

On September 19, McDaniel was taken to a meeting in Executive Vice President Teter's office. Present were: McDaniel, Bass, Teter, and Garrett. As the meeting

[4] The General Counsel and Respondent stipulated the authenticity of the charge in Case 5-CA-11723, filed November 20, 1979, and a dismissal letter in that charge from the Regional Director or Region 5. These are G.C. Exhs. 10 and 11, respectively. Additionally, the General Counsel moved, following the hearing, to admit a letter from the Office of Appeals in the General Counsel's office, Washington, D.C., which reversed the action of Region 5 in dismissing Case 5-CA-11723. The General Counsel's motion is granted and the letter in question is admitted as G.C. Exh. 20.

[5] Garrett was the station's manager of community services.

[6] That the job assignments were in writing is not significant in the context of this case. McDaniel had regularly received them in this form. These assignments are in the record as G.C. Exh. 15.

[7] McDaniel insisted under repeated questioning that he had never been required to sign out. He stated that his practice was not to sign out prior to receiving G.C. Exh. 16. The testimony of Teter and Linkous makes it clear that the matter was a voluntary one, at least prior to Garrett's September 18 job list. Teter, for instance, testified: "We try to conduct our affairs on a voluntary basis. We—the people were asked to sign in and out." Linkous stated: "Other than to ask him to sign in, I don't recall a conversation that went into great detail about it."

[8] I do not credit Garrett's claim that the word "out" was not next to McDaniel's name when he examined the sheet prior to McDaniel's return. I can see no reason why McDaniel would have written "out" on the sheet following his return and then lightly crossed the word through on the sheet.

[9] It was at this time that the word "out" was crossed through on G.C. Exh. 17 and the entry "11:45" made.

[10] The obscenity was overheard by Denny P. Dennison, Jr., a self-employed contractor, who happened to be in the hall when McDaniel left Garrett's office. There is no probative evidence that any of Respondent's employees heard McDaniel. While Respondent argues that McDaniel must have been overheard because he was loud, I am unable so to find in the absence of any evidence concerning the location of those employees presumed to have heard him.

began, McDaniel apologized to Garrett for his behavior on September 18. Teter commented that it was too late for that. Teter then told McDaniel that he had been an embarassment to the station and management by the filing of complaints with the National Labor Relations Board, but that those charges had been resolved.[11] Teter then proceeded to outline how McDaniel had failed in completing his job assignments. Teter referred to the petition of the previous May, stating that only management could decide who was doing their job. He pointed out that McDaniel had twice that year embarassed supervisors by insubordinate acts and had failed to follow company policies.[12] McDaniel renewed his complaint about being taken off camera work and was told by Teter that he was hired as a janitor. McDaniel was then given his final check and left the station.

3. The reasons for McDaniel's discharge

Following the lengthy account given of McDaniel's alleged job failings, in answer to Respondent's counsel, Teter stated the following:

> Q. (By Mr. Hutchison) Mr. Teter, who made the decision to discharge?
>
> A. I did.
>
> Q. I ask you, sir, whether or not had there been the obscenity uttered on the previous afternoon by Mr. McDaniel that would he have been discharged on this occasion?
>
> A. No. If I can make a statement with respect to that.
>
> Q. Please do.
>
> A. We were substantially dissatisfied with Mr. McDaniel's work over a period of time. This was the crowning blow. We don't like to dismiss people.

Based on the above-quoted testimony of Respondent's executive vice president, I find that the proximate cause of McDaniel's discharge was the obscenity uttered by him on September 18 in Garrett's presence and that his various work-related failings outlined by Teter would not have led to discharge.

B. *Analysis*

1. The discharge

As found above, McDaniel's discharge resulted from the incident which occurred as he was leaving Garrett's office on September 18. It thus becomes necessary to analyze the interview with Garrett and its significance with respect to McDaniel's outburst.

The United States Supreme Court has held that where an employee is called by the employer into an interview which the employee reasonably believes might result in discipline or discharge, he or she is entitled to have a union representative present. *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975). If a valid request for representation is made, the employer has three options. He may grant the request, halt the interview, or give the employee a choice between continuing the interview without representation or terminating the interview. *General Electric Company*, 240 NLRB No. 66, fn. 12.

It is well settled that the employee's request for representation must be based on a reasonable belief, in the light of all circumstances, that discipline may ensue. A valid request cannot be based on "a mere figment of the employee's imagination." See *Exxon Company U.S.A.*, 223 NLRB 203, 206 (1976) (comment of Aministrative Law Judge Richard L. Denison). McDaniel was not, on September 18, motivated by "a mere figment" when he requested that a union representative be present at the interview with Garrett. He was reasonably motivated to ask for union representation on the basis of the following objective circumstances known to him at the interview in Garrett's office:

(1) The failure to sign in and out in the normal fashion after receiving the written direction do so so.

(2) The meeting with Garrett on his return from lunch, and Garrett's direction to him to correct the entries in the sign-out book.

(3) The simultaneous order to meet in Garrett's office and the fact that the interview took place in the office, a locus of managerial authority.

(4) The fact that McDaniel had not completed his job assignments, and, more, that these assignments had been left uncompleted the day before.

(5) The fact that the written instructions of September 18 had stated that the job assignments were to be completed "*without fail*" (G.C. Exh. 16).

(6) The fact that McDaniel had been interviewed once before, in May 1980, concerning his job performance. This interview was at management's instance and took place in management's offices.

(7) The "tone" of Garrett's questioning at the beginning of the September 18 interview. When due consideration is given to the manner and subject matter of the questioning, a reasonable employee might, indeed, believe himself to be in trouble with management and in need of whatever assistance a union representative might be able to provide.[13]

Accordingly, I find that on September 18, 1979, Respondent violated Section 8(a)(1) of the Act by denying McDaniel's request for union representation made at a time when he could reasonably believe that disciplinary consequences might ensue from the interview. *N.L.R.B.* v. *J. Weingarten, Inc., supra*. McDaniel was under no obligation to continue the interview and his refusal to do so was protected. See *AAA Equipment Service Company*, 238 NLRB 390 (1978), employee ignored supervisor's warn-

[11] This finding is based on the credited testimony of McDaniel and Bass. Garrett and Teter both denied that Teter had made this statement, but their testimony vacillated to a great degree. This was particularly true with reference to the question of whether the NLRB and labor board charges had been mentioned in the interview. Teter did not remember any reference to the NLRB until he was confronted with G.C. Exh. 19, a memorandum account of McDaniel's discharge.

[12] This last appears to be a reference to the previous day's failure to sign in and out.

[13] I do not find the fact that McDaniel escaped in May 1979 relatively unscathed from a similar interview when he did not request representation persuasive on the issue of his reasonable fear of disciplinary action on September 18. There was a different supervisor involved and, as a recidivist on September 18, he might reasonably feel that management would take action above and beyond what it had done in May 1979 at the time of the first offense.

ing that he would be terminated and walked away from an interview where union representation was improperly denied.

There remains for decision the question of whether McDaniel's outburst to Garrett as he was leaving the interview destroyed the protected status of his refusal to continue the interview. I do not find that it did. Garrett and McDaniel were alone; the only other individual who heard the outburst was a nonemployee of Respondent and there is no evidence that general discipline in the station was harmed by virtue of other employees hearing it; Garrett had directed an illegal discharge threat to McDaniel immediately prior to the outburst thus, as I find, triggering the outburst; and, finally, the language involved was not directed at Garrett personally but was descriptive of Garrett's illegal continuation of the interview and illegal discharge threat. Under these circumstances, I do not find that McDaniel's outburst rendered his conduct in terminating the interview unprotected. Respondent's discharge of McDaniel for his conduct in leaving the interview is, therefore, violative of Section 8(a)(1) of the Act. *Atlantic Steel Company*, 245 NLRB 814 (1979); *Quality Manufacturing Company*, 195 NLRB 197 (1972); *Thor Power Tool Company*, 148 NLRB 1379, 1380 (1964) (term "horse's ass" used in reference to respondent official as protected grievance meeting was breaking up).[14]

2. The alleged violation of Section 8(a)(4)

I also find that McDaniel's discharge violated Section 8(a)(4) of the Act. The General Counsel bases his contention that Section 8(a)(4) was violated on the basis of various Board charges in which McDaniel was implicated or named and the comments by Teter at the beginning of the September 19, 1980, discharge interview.[15] While many employees at the station were implicated in the charges (e.g., 17 employees including McDaniel are named in an appendix to the charge in Case 5-CA-10565 and 4 beside McDaniel in the notice to employees, designated G.C. Exh. 5) and it could be argued that Respondent had no apparent reason for thus singling out McDaniel, I have found, *supra*, that Teter began the discharge interview by stating that McDaniel had embarrassed the station with the numerous NLRB charges that had been filed. Teter then commented that the charges had been "resolved." In view of the credited testimony of Bass and McDaniel in this regard, I find that Teter was also motivated by resentment at the NLRB charges previously filed in arriving at his decision to discharge McDaniel. Such motivation violates Section 8(a)(1) and (4) of the Act. *N.L.R.B.* v. *Robert Scrivener d/b/a AA Electric Company*, 405 U.S. 117 (1972); *Glenside Hospital*, 234 NLRB 62 (1978).

3. The bulletin board

I find that, prior to June 22, 1979, Respondent's policy with regard to use of its bulletin boards was to allow employee usage. Indeed, there appears to have been no express policy. Material was freely posted subject only to occasional policing to remove the excess. Prior to June 22, 1979, Respondent and the Union were bargaining, *inter alia*, on the subject of bulletin board use[16] and union-related matter had been placed on the bulletin board by employees. Respondent presented no credible evidence of a valid business justification for the new rule. Under these circumstances, I find that Respondent, by its postings of June 22, and October 10, 1979, violated Section 8(a)(1) of the Act in forbidding employee use of bulletin boards. *Beyerl Chevrolet, Inc.*, 199 NLRB 120, 127 (1972) (Change in rules regarding bulletin board use tended to "chill unionism"); *Liberty Nursing Homes, Inc. d/b/a Liberty House Nursing Home*, 236 NLRB 456, 461 (1978).

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Having found that Respondent unlawfully deprived McDaniel of union representation during an investigatory interview, which he reasonably believed might result in adverse consequences, and then discharged McDaniel because of his refusal to continue with the interview, I shall recommend that Respondent be ordered to offer McDaniel immediate and full reinstatement to his former position or, if that position is no longer available, to a substantially similar position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay occasioned as a result of the discrimination against him, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[17]

I shall recommend that Respondent be ordered to cease and desist from denying its employees union representation when requested in connection with investigatory interviews where employees have reasonable grounds to believe that disciplinary consequences may ensue. Finally, I shall recommend that Respondent rescind its June 22 and October 10, 1979, directives depriving its employees of bulletin board privileges and restore the *status quo ante*.

[14] In *Thor*, the Board found that the epithet was used as a pretext to discharge an employee because of Respondent's growing anger at his conduct of a grievance meeting. In the instant case, I find that the result is the same whether analysis indicates that McDaniel's outburst did not render his conduct in leaving the interview unprotected or that Respondent used the outburst, as I also find, as a pretext to discharge McDaniel for leaving the interview. Cases such as *Kraft Foods, Inc.*, 251 NLRB 598 (1980), are not relevant here, as Respondent did not discharge McDaniel for matters learned of prior to the interview as opposed to those learned of in the interview.

[15] The charge and related materials in Case 5-CA-11723 can have no bearing on this matter because that charge was filed after McDaniel's discharge.

[16] I do not infer from this fact, as counsel for Respondent argues, that a previous policy of forbidding employee use of bulletin boards was in effect and the union was bargaining with the purpose of negotiating a change in that policy. In the absence of any evidence relating to the negotiations, the Union may, as General Counsel argues, have been seeking confirmation of practices already in existence.

[17] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As in my judgment the evidence in this case demonstrates that Respondent has a propensity to violate its employees' rights under Section 7 of the Act, I shall recommend a broad cease-and-desist order. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

CONCLUSIONS OF LAW

1. Respondent Roy H. Park Broadcasting of Roanoke, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees is a labor organization within the within the meaning of Section 2(5) of the Act.

3. By ignoring Barry McDaniel's request to have union representation in an investigatory interview, which he reasonably believed might result in disciplinary action against him, and by discharging him, Respondent violated Section 8(a)(1) of the Act. Respondent violated Section 8(a)(4) of the Act by discharging McDaniel because he gave testimony under the Act.

4. By denying its employees bulletin board privileges previously accorded them, Respondent violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The Respondent, Roy H. Park Broadcasting of Roanoke, Inc., Roanoke, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or suspending any employee on the basis of his refusal to continue an investigatory interview where it has ignored or denied the employee's request to have union representation at said interview under Section 7 of the Act, or because he gave testimony under the Act.

(b) Ignoring or denying the right of union representation requested by employees while conducting investigatory interviews when the employees have reasonable grounds to believe that the matters to be discussed may result in their being the subject of disciplinary action.

(c) Denying employees bulletin board privileges previously enjoyed by them.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Barry McDaniel immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings incurred by him as a result of his suspension and discharge in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Rescind the directives dated June 22 and October 10, 1979, denying employees bulletin board privileges.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to ascertain the backpay due under the terms of this Order.

(d) Post at Respondent's broadcasting station in Roanoke, Virginia, copies of the attached notice marked "Appendix."[19] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[19] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."